
HISTORICAL BACKGROUND OF SEXUAL OFFENCES IN INDIA

Ganesh Kiran BS^{*} & Dr. Jyothi Vishwanath^{**}

ABSTRACT

The sexual offence is perhaps as old as the human civilization itself. The earliest crimes that we could trace would lead us to murder abduction and rape that were prevalent among the nomad race. The civil actions that we see today are of much later origin. Ancient times saw victors ravishing the women of the vanquished whenever there was a war between two nations.

The ravishing of women of the fallen race was almost a thumb of rule and regularly followed by the soldiers of the victorious army. The women's movements in British can be divided into four stages. During the first stage from 1840-1870 Women's organization worked on a variety of issues. The second stage from 1871 to 1905 was dominated by constitutional women suffrage organization, which focused entirely on gaining the right to vote, but adopted militant tactics which led in 1918 to the enfranchisement of women over 30 years of age. The dominant feature of the fourth stage from 1919 to 1930 was extension of women franchise to include all women over 21 years. Within the Indian subcontinent there have been infinite variations on the status of women diverging, according to cultural milieu, family structure, class, caste, property rights and morals.

^{*} Research Scholar, LLM, Department of Studies in Law University Law College, Bangalore University, Bangalore.

^{**} Associate Professor, Department of Studies in Law University Law College, Bangalore University, Bangalore.

1.1 Introduction

Women has been described in an ancient Sanskrit saying "YATRA NARYASTU PUJYANTE RAMANTE TATRA DEVATAH". Women have been given the status of mother goddess is considered the source of Shakthi. There was a period in Indian history when women were accorded equal status with men. From the Vedic Period to modern period the status of women gradually declined.

The seeming contradictions of Indian attitudes towards sex can be best explained through the context of history. India played a role in the history of sex, from writing the first literature that treated sexual intercourse as a science, to in modern times being the origin of the philosophical focus of new age groups' attitudes on sex. It may be argued that India pioneered the use of sexual education through art and literature. As in all societies, there was a difference in sexual practices in India between common people and powerful rulers, with people in power often indulging in hedonistic lifestyles that were not representative of common moral.

1.2 Sexual Offences against Women in Vedic (Ancient) and Post Vedic Periods.

Women during the early Vedic period enjoyed equal status with men in all aspects of life. Works by ancient Indian grammarians such as Patanjali and Katyana suggest that women were educated in the early Vedic period. Rigvedic verses suggest that women married at a mature age and were probably free to select their own husbands. The Indian cultural tradition begins with the Vedas it is generally believed that the Vedic period is spread over from 300 B.C to 600B.C some observations and broad generalization can only be made regarding status of women during this vast period. The freedom were enjoyed by the woman and they get equal opportunities girls were given in marriage only after puberty that too after completing their education women had the right to select their life —partners.¹

The practice of taking Dowry was there but it was only symbolic. It was prevalent in rich and royal families only in the form of movable gifts. It had not emerged as a social evil. Purdah was there in Vedic period. In Vedic times there were certain restrictions on women's right. In Vedic times there was no discrimination between boy and girl: There was two class of girls.

¹ Law relating to sexual offences against women. By V.K.Devan, Law relating to offences against women, Second Edition, P-16.

i) The Brahmavadinis students, who donned the sacred three constant reminders of the holy thread and study the Vedas, but in distinction from the boy students, do the begging for alms their own parental homes and

ii) The Sadhyo Vadhey who are given only symbolically and formally immediately before marriage. Man used to regard women as partners in managing the affairs during the Grihastha, Vanaprastha, and Sanyasa Ashrams in life and consequently women must have enjoyed a quality of life comparable to that of the man.²

In the religious field, wife enjoyed full rights and regularly participated in religious ceremonies with her husband. Religious ceremonies and sacrifices performed jointly by the husband and the wife. The Vedas mention instances of women who married. The Atharvaveda, for example mentions an instance of a woman marrying for the second time. The Dharmasutras clearly stated that women could remarry. Sage Vashist prescribed that a woman remarry after having waited for her husband for no longer than five years. Kautilya and Narada have also laid down similar rules for women who could enter into nuptial ties for a second time.

In approximately 500 B.C., the status of women began to decline. Although reform movements such as Jainism allowed women to be admitted to religious orders, by and large women in India faced confinement and restrictions. Women must have enjoyed quality of life comparable to the man. Women never observed "Purdah" they enjoyed freedom in selecting their life partner. They could educate themselves widows were permitted to marry. Divorce was not permissible to them even men did not have rights to divorce their wives. In some kingdoms in ancient India had traditions such as Nagaravadhu ("bride of the city"). Women competed to win the coveted title of Nagaravadhu. Amrapali is the most famous example of a Nagaravadhu.

In ancient Indo Aryan Society, the death penalty was prescribed for Aryan women guilty of infidelity. Manusmriti says, "when a woman deceives her husband (with another man), then the king should ensure that she be torn apart by dogs in public place and the evil man should be burnt in a bed of red-hot 'iron' infidelity to husband was considered a grave sin and it was believed that such women went to hell the husband the power curse the wife who was disloyal to him", thus the sage Gautama cursed his wife Ahalya for sleeping with Indra

² 6 Ibid.

though she was not at fault of her own. During the Maurya period, if a woman was found guilty of a carnal crime her generative organs were cut off and she was ultimately sentenced to death.

Cutting off ears and nose of wives-Aryan husband cut off the ears and nose of their wives if they left the house without their prior permission, Lord Rama practiced the cutting off of women nose for minor offences, thereby providing divine sanction for the custom. Surpanakha was a Dravidian lady who fell in love with Ram, she proposed to him, but he directed to his brother Laxman to cut off her ears and nose for this crime. Other restrictions are the Aryan women had to wear a face —veil, when going out they were not supposed to entertain strangers. Ancient women were not allowed to sleep alone. During the absence of her husband, she was supposed to sleep with of her female relatives.

1.3 Sexual Offences against Women in Medieval Period.

1.3.1 During the Mughals Period.

Indian women's position in society further deteriorated during the medieval period, when child marriages and a ban on remarriage by widows became part of social life in some communities in India. The Muslim consequent the India subcontinent brought Purdah to Indian society. Among the Rajputs of Rajasthan, the Jauhar was practiced In some parts of India, some of Devadasi were sexually exploited. Polygamy was practiced among Hindu Kshatriya rulers for some political reasons in many Muslim families, women were restricted to Zenana areas of the house.

A girl in a Hindu house was taught to respect the members of the family. Especially the elders from her childhood. She was supposed to worship her husband like god and obey his command. She was to follow her pativrata dharma and lead a very chaste life.³

Devadasi is often misunderstood as religious practice. It was practised in southern India, in which women were "married" to a deity or temple. The ritual was well-established by the 10th century A.D. By 1988, the practice was outlawed in the country. Purdah was observed mainly the Muslim ladies and was not so rigid, with the Hindu ladies the practice of strict veiling was

³ Rekha Misra, Women in Mughal India, Delhi Law house, Second Edition, P.133.

common among the Mohammedans with advent Turks in India. It was also adopted by the Hindu women as protective measures to save their honour at the foreigner invaders.⁴

Purdah is the practice among some Muslim communities requiring women to cover themselves in front of males for the purpose of modesty. The greatest tragedy in the life a Hindu woman was the death of her husband, unlike the Muslim widow, remarriage was not permitted among Hindus in the Mughal period except among some lower classes. Jauhar refers to the practice of voluntary immolation by wives and daughters of defeated warriors, in order to avoid capture and consequent molestation by the enemy.⁵ The practice was followed by the wives of defeated Rajput rulers, who are known to place a high premium on honour. Evidently such practice took place during the Islamic invasions of India. Sati is an old, almost completely defunct custom among some communities, in which the widow was immolated alive on her husband's funeral pyre. Although the act was supposed to be voluntary on the widow's part, its practice is forbidden by the Hindu scriptures.⁶

The practice of performing sati voluntarily was an ancient custom, but gradually emphasis was laid on becoming a widow the death of her husband even against her wishes. It was mostly performed by the ladies of the Brahmins, Kshatriya and the Baniya communities some of the Moghuls emperors tried to ban this practice! Jahangir is also said to have prohibited Sati, it could not be performed without the permission of the King, especially in case of young widows. In the year 1633 AD. Aurangzeb issued an order banning the Sati system". Akbar is said to have issued an order that a woman should not be forced to be a Sati. Jahangir is also said to have prohibited Sati. It could not be performed without the permission of the King, especially in case of young widows in the year 1633 A.D.

1.3.3 Sexual Offences against Women during British Period.

At the time of the advent of the British rule, the position of women in India was at its lowest ebb. Child marriages were in vogue. Sati was evidently prevalent. 'Purdah' was strictly enforced on Muslim women. Female literacy was considered as source of moral danger dancing girls had lucrative professions.⁷ In the 1920s, there was a debate between the orthodox and

⁴ Jiapalan., Women and Human Rights, Central Law Agency, First Edition, P. 21-22

⁵ Ibid —P .133

⁶ Ibid —P .133

⁷ T.S. Devadas., Indian women through the ages. In Encyclopaedia of women in India, Fourth Edition P. 43.

reformist sections of the Brahmins living in Mysore city. The former was that it was sinful to keep a girl after she had reached puberty!

The women of India have always been relegated to secondary role vis-a-vis men.⁸ The practice of child marriage, sati, infanticide of newborn girl child to avoid payment of bride money, prohibition of female education and widow remarriages, polygamy marriage, slavery, Purdah system and the dowry system all these prescribed by the society left the women weak and fragile and dependent on men from the time of their birth to death by the turn of the century many of these malpractices were abolished for which the credit lies to Indian social and intellectual reformers such as Raja Ram Mohan ROY and Ishwarachandra Vidyasagar.⁹

1.4 Sexual Offences in Modern India

Around 35% of women globally have experienced either physical or sexual intimate partner violence or non-partner sexual violence, according to a 2013 global reviewed by UN Women. Some national violence studies show that up to 70% of women have experienced physical or sexual violence in their lifetime from an intimate partner, the UN report had said.

Sexual offences against women have more than doubled over the past ten years, according to latest data released by the National Crime Records Bureau. As many as 2.24 million crimes against women were reported over the past decade: 26 crimes against women are reported every hour, or one complaint every two minutes, reveals an India spend analysis based on the last decade's 'data. The semantic meaning of "crime against women" is direct or indirect physical or mental cruelty to women. Crimes directed specifically against women and in which only women are victims are characterized as "Crimes against Women".¹⁰

Cruelty by husbands and relatives under section 498-A of Indian Penal Code is the major crime committed against women across the country, with 909,713 cases reported over the last 10 years, or 10 every hour. Cruelty by Husband and Relatives (Section 498- A IPC). Assault on Women with Intent to Outrage Her Modesty (Section 354 IPC); Kidnapping & Abduction of Women (Section 363, 364, 364A, 366 IPC); Rape (Section 376 IPC); Insult to the Modesty of Women (Section 509 IPC); Dowry Deaths (Section 304-B IPC).

⁸ Ibid- .P.43

⁹ V.K.Dewan, Law relating to offences against women, Central Law Publications, Second Edition. P.3

¹⁰ Source: National crime Records Bureau.2014

Assault on women with intent to outrage her modesty (470,556), earlier classified as molestation under section 354 of IPC, is the second-most-reported crime against women over the last decade. Kidnapping and abduction of women (315,074) is the third-most-reported crime followed by rape (243,051), insult to modesty of women (104,151) and dowry death (80,833). More than 66,000 cases have been reported under the Dowry Prohibition Act, 1961, over the last decade. Ten cases of cruelty by husband and relatives are reported every hour across the country followed by cases of assault on women with intent to outrage her modesty, kidnapping & abduction and the data of National Crime bureau of India states on the importance of, and the rape.

NCRB added three more heads under which cases of crime against women have been reported in 2014.¹¹ These include attempt to commit rape (4,234), abetment of suicide of women (3,734) under section 306 IPC and protection of women from domestic violence (426). As many as 66% of women reported experiencing sexual harassment between two and five times during the past year, a 2010 study in New Delhi had found.

Andhra Pradesh leads in Crimes against Women

Andhra Pradesh has reported the most crimes against women (263,839) over the past 10 years. The state ranks first in crimes reported for insult to modesty of women (35,733), second in cruelty by husband and relatives (117,458), assault on women with intent to outrage her modesty (51,376) and fourth among dowry-related deaths (5,364). West Bengal (239,760) is second, leading in crimes related to cruelty by husband and relatives (152,852), second in kidnapping and abduction (27,371) and fifth in dowry-related deaths (4,891). Uttar Pradesh (236,456) ranks third, followed by Rajasthan (188,928) and Madhya Pradesh (175,593). These five states account for almost for half of all the crimes committed against women across the country over the last decade

1.5 Conclusion

In the Indian modern country is fast emerging as a global power but for half of its population, the women across the country, struggle to live life with dignity continues. Women, irrespective of their class, caste and educational status, are not safe in the modern society women have been

¹¹ 2014 National Crime Record Bureau Report.

the victims of exploitations since long time different fields in their life both physically, socially, mentally and economically.

There are several causes of sexual as well as moral abuse which are very often highlighted by the Indian modern society, and a lot of those also remain unexplored. Although such violence against women sexual harassment, exploitation to women is not of recent origin, its trace is found in the history of ancient India. They are victims of crimes directed specially at them rape, kidnapping and being trafficked for sex , harassment abduction, dowry related crimes, molestation, sexual harassment, eve teasing etc. women are being trafficked for sex harassment at workplaces and tortured in family and society.

The historical development of gender discourse and feminist writing particularly in India shows that the studies on women's history have scantily touched the aspects that what occurred in women's life and explored very little on what happened to women's status in different period of history. Another aspect of women's history was to examine that how men thought about themselves. Desai has rightly critiqued available histories simply celebrate women's participation in public life and admire research that explains how gender ideology is maintained and reproduced. However to understand the human history scientifically and in its totality it needs fresh investigation in the context of changing dynamics in women's status in a given society and how far the legislation and judiciary have helped in providing justice to women who have been victims.

REFERENCES

1. Law relating to sexual offence by VK Dewan
2. Women in Mughal India by Rekha Misra
3. Women and Human Rights by Jaipalan
4. Status of women in ancient India
5. Romila Thapar , Ancient Indian history
6. Indian women through ages. In Encyclopaedia of women in India.
7. 2014 National crime record bureau report.
8. J S Mill 1840. The history of British India.